

"Test the West": Reimagining Sovereignties in the Post-Soviet Space

Wittke, Cindy

Postprint / Postprint

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Wittke, C. (2018). "Test the West": Reimagining Sovereignties in the Post-Soviet Space. *Review of Central and East European Law*, 43(1), 1-22. <https://doi.org/10.1163/15730352-04301005>

Nutzungsbedingungen:

Dieser Text wird unter einer Deposit-Lizenz (Keine Weiterverbreitung - keine Bearbeitung) zur Verfügung gestellt. Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

gesis
Leibniz-Institut
für Sozialwissenschaften

Terms of use:

This document is made available under Deposit Licence (No Redistribution - no modifications). We grant a non-exclusive, non-transferable, individual and limited right to using this document. This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

Mitglied der

Leibniz-Gemeinschaft

“Test the West”:¹ Reimagining Sovereignities in the Post-Soviet Space

Cindy Wittke²

Leibniz Institute for East and Southeast European Studies, Regensburg,
Germany

<wittke@ios-regensburg.de>

Abstract

With the incorporation of the Crimean Peninsula into Russian territory, the armed conflict in Eastern Ukraine and the temporary formation of the confederation of *Novorossia* (New Russia), the international community of states has been witness to complex processes of reimagining territories, boundaries, citizenship, and fragmented sovereignties in the post-Soviet space. In its foreign policy agenda, Russia conceptualizes all former Soviet republics as the ‘Near Abroad’, a special sphere of its interests and influence. This paper explores Russia’s use of the vocabulary of international law to legitimize its interventions in the Near Abroad, which is connected to the ‘*Russkii*

1 “Test the West” was part of a headline addressing the so-called Ukraine Crisis in the 6 March 2014 issue of the German weekly newspaper *Die Zeit*. The article focused on the short- and long-term implications of Russia’s role regarding Crimea for relations between Russia and the West; see Tina Hildebrand, Michael Thumann, and Bernd Ulrich, “Die Krimkrise: Wie weit geht Russland? Test the West”, *Die Zeit* (6 March 2014).

2 Cindy Wittke is leader of the Frozen and Unfrozen Conflicts research group at the Leibniz-Institute for East and Southeast European Studies (IOS) in Regensburg. This article outlines conceptual thoughts for the author’s research project “‘Test the West’: (Frozen) Conflicts and Contested Sovereignities in the Post-Soviet Space”. It results from the author’s contribution to an international conference on “East European Cataclysms and the Making of Modern International Law” and the preparation of a special issue on “International Law and Legal Education in Ukraine”, co-edited by Oksana Holovko-Havrysheva of Ivan Franko National University of Lviv and Dietmar Müller and Stefan Troebst of the Leibniz-Institute for the History and Culture of Eastern Europe (GWZO) in Leipzig. An earlier draft of the article was also presented and discussed at the “Transnational Sovereignities: Constellations, Processes, Contestations” conference, convened by Peer Zumbansen, Transnational Law Institute, Dickson Poon School of Law, King’s College London.

Mir' (Russian World), another foreign policy concept that resonates with ideas of Neo-Eurasianism and the Fourth Political Theory and with the creation of a Eurasian space as a counter-concept to the West. Russia and its conceptualized antagonist, the West, take positions on public international (legal) front lines, evoking counter-narratives concerning their understandings of the meaning of the vocabulary of international law and politics, the regulation of international relations, and the foundations of world order. These clashes leave observers wondering: Russia may instrumentalize and manipulate the vocabulary of geopolitics, international law, and politics, but what if these clashes are also rooted in different imaginaries of international law and politics? Against this background, this article aims to develop conceptual approaches to further investigate and gain a better understanding of the complex dimensions of the clashes between Russian and Western counter-narratives and discourses concerning the meanings and functions of basic principles of international law and politics as powerful societal regulative imaginaries.

Keywords

Russia – Near Abroad – post-Soviet space – Sovereignty – international law – foreign policy – Neo-Eurasianism

1 Introduction

The five-day Russo-Georgian War of August 2008, the incorporation of the Crimean Peninsula into Russian territory after a contested referendum and declaration of independence in March 2014, and the ongoing unresolved conflict in Eastern Ukraine—particularly the temporary formation of a union or confederation between the self-proclaimed Luhansk People's Republic and Donetsk People's Republic, and their reference to the historicized idea of *Novorossia*³—have made the international community of states witness

3 The term *Novorossia* (New Russia) originated in the eighteenth century and was historically used in tsarist Russia to denote southern and eastern Ukraine. It was taken up, *inter alia*, by Putin and actors in the conflicted territories of the separatist republics of Luhansk and Donetsk to embed their separatist ambitions in a historicized territorial context (and claims).

Available official Russian documents are referred to in English for better access to references (official translation by the Ministry of Foreign Affairs of the Russian Federation or the presidential administration).

to complex processes of contesting and reimagining territories, boundaries, citizenship, and sovereignties in the post-Soviet space under the aegis of the Russian Federation.⁴ Russia's foreign policy agendas conceptualize all other fourteen newly independent states—with some variation when it comes to the Baltic states—that formerly belonged to the Soviet Union as its Near Abroad (*blizhnee zarubezh'e*), a politicized geographic space where Russia has special interests and influence and that appears, in effect, to be a space of particular contested, conditional, and hierarchal sovereignties. How does the Western literature address especially the challenges presented to boundaries, territories, citizenship, and sovereignty in the course of the so-called Ukraine Crisis? Current debates in mainstream doctrinal international legal scholarship, with some exceptions,⁵ focus on Russia's violations of international law and principles. Furthermore, analyses of Russian foreign policy have ranged from constructivist approaches focused on identity formation and Western orientation in the 1990s and early 2000s to neo-realist analysis of Russia's foreign policy since 2007–2008. Positivist international relations analysis, for instance, refers to neo-realism and geopolitics to explain Russia's conduct in its Near Abroad since the Russo-Georgian War in 2008.⁶ Comparative political scientists are

-
- 4 The terms *post-Soviet space* and *post-Soviet area* are debated but used in a descriptive way across disciplines to refer to the 15 newly independent states that formerly belonged to the Soviet Union (with some differentiation, e.g., between the four Baltic states and the eleven other states). See also, e.g., Alexander Salenko, "Legal Aspects of the Dissolution of the Soviet Union in 1991 and its Implications for the Reunification of Crimea with Russia in 2014", 75(1) *ZaōRV* (2015), 141–166; Angelika Nußberger, "Russia", *mpepil*, online edition (2009), 105–108.
- 5 E.g., Boris N. Mamlyuk, "The Ukraine Crisis, Cold War ii, and International Law", 16(3) *German Law Journal* (2015), 479–522; Outi Korhonen, "Deconstructing the Conflict in Ukraine: The Relevance of International Law to Hybrid States and Wars", 16(3) *German Law Journal* (2015), 452–478; Zoran Oklopčić, "Introduction: The Crisis in Ukraine Between the Law, Power, and Principle", 16(3) *German Law Journal* (2015), 350–364; Lauri Mälksoo, *Russian Approaches to International Law* (Oxford University Press, Oxford, 2015).
- 6 E.g., with variations: Jure Vidmar, "The Annexation of Crimea and the Boundaries of the Will of the People", 16(3) *German Law Journal* (2015), 356–383; Brad R. Roth, "The Virtues of Bright Lines: Self-Determination, Secession, and External Intervention", 16(3) *German Law Journal* (2015), 384–415; Amandine Catala, "Secession and Annexation: The Case of Crimea", 16(3) *German Law Journal* (2015), 581–607; Christian Marxsen, Anne Peters, and Matthias Hartwig, Symposium "The Incorporation of Crimea by the Russian Federation in the Light of International Law", 75(1) *ZaōRV* (2015), 3–5; Christian Marxsen, "Territorial Integrity in International Law—Its Concept and Implications for Crimea", 75(1) *ZaōRV* (2015), 7–26; Veronika Bílková, "The Use of Force by the Russian Federation in Crimea", 75(1) *ZaōRV* (2015), 28–50; Stefan Oeter, "The Kosovo Case—An Unfortunate Precedent", 75(1) *ZaōRV* (2015), 51–74; Anne Peters, "Das Völkerrecht der Gebietsreferenden. Das Beispiel der Ukraine 1991–2014", 5–6

engaging in ongoing discussions about the explanatory power of transformation theories, the Western modernization and democratization paradigm, and the observed stability of post-Soviet authoritarian regimes.⁷ One theme that is common to works from different fields is the role of (Russian) propaganda, lawfare, and what is increasingly referred to as ‘information wars’. Debates on these three topics, in particular referring to the complex conflict constellations in Ukraine, frequently arrive at conclusions concerning the delegitimization of factual and legal arguments raised by Russia, and the same holds true the other way around when it comes to Russian perspectives on what it considers Western propaganda.⁸

Osteuropa (2014), 101–134; Otto Luchterhandt, “Die Krim-Krise von 2014. Staats- und völkerrechtliche Aspekte”, 5–6 *Osteuropa* (2014), 61–86; Hans-Joachim Heintze, “Völkerrecht und Sezession—Ist die Annexion der Krim eine zuverlässige Wiedergutmachung sowjetischen Unrechts?”, 27(3) *Journal of International Law of Peace and Armed Conflict* (2014), 129–138; Roy Allison, *Russia, the West, and Military Intervention* (Oxford University Press, Oxford, 2013); Roy Allison, “Russian ‘deniable’ intervention in Ukraine: how and why Russia broke the rules”, 90(6) *International Affairs* (2014), 1255–1297; Ted Hopf, “Identity, legitimacy, and the use of military force: Russia’s Great Power identities and military intervention in Abkhazia”, 31 *Review of International Studies* (2005), 225–243; Natasha Kuhr, “Russian foreign policy”, in Graeme Gill and James Young (eds.), *Routledge Handbook of Russian Politics and Society* (Routledge, New York, 2012), 421–431; Robert Donaldson, “Russia and the states of the former Soviet Union”, in Graeme Gill and James Young (eds.), *Routledge Handbook of Russian Politics and Society* (Routledge, New York, 2012), 432–443.

- 7 Hans Höhmann and Hans-Henning Schröder (eds.), *Russland unter neuer Führung. Politik, Wirtschaft und Gesellschaft am Beginn des 21. Jahrhundert* (Agenda Verlag, Münster, 2001); Wolfgang Merkel, *Systemtransformation: eine Einführung in die Theorie und Empirie der Transformationsforschung* (Leske + Budrich, Opladen, 1999); Wolfgang Merkel, *Systemtransformation: eine Einführung in die Theorie und Empirie der Transformationsforschung* (Springer vs, Wiesbaden, 2010); Eberhard Sandschneider, *Stabilität und Transformation politischer Systeme: Stand und Perspektiven politikwissenschaftlicher Transformationsforschung* (Springer vs, Opladen, 1995); Dieter Segert, *Transformationen in Osteuropa im 20. Jahrhundert* (UTB, Wien, 2013).
- 8 Gabriele Krone-Schmalz, *Russland verstehen. Der Kampf um die Ukraine und die Arroganz des Westens* (C.H. Beck, Munich, 2015) (this journalistic perspective—besides making some interesting arguments about how Russia is presented in Western media to the public—takes an almost explicitly pro-Russian point of view). The author follows Mamlyuk, who finds that “Positivist accounts fail to acknowledge the role of information warfare or propaganda in fracturing and reconstructing the international legal order and the way in which the information war has emerged as a new form of lawfare.” Mamlyuk, *op.cit.* note 5, 493; see also Timm Beichelt, “Legitimer Autoritarismus? Politische Stabilität im postsowjetischen Raum”, 64(8) *Osteuropa* (2014), 49–61.

Against this complex background of conflict constellations, this article's focus turns in particular to Russia's foreign policy and its usage of the vocabulary of international law to legitimize its engagement in the Near Abroad and its promotion of the concept of *Russkii Mir*, which is connected to Russia's role as the geopolitical continuator of the Soviet Union. Conceptually, both Near Abroad and *Russkii Mir* seem to resonate with contemporary theoretical and ideological approaches like Neo-Eurasianism and the Fourth Political Theory, as well as with the idea of creating a Eurasian space through the formation of a Eurasian Union as an institutionalized counter-concept to Western alliances. Russia and its conceptualized antagonizing West take positions on public international (legal) front lines in both the media and in international organizations, eliciting counter-narratives concerning their understandings of the vocabulary of international law and politics, the regulation of international relations, and the foundations of the contemporary world order.⁹ It is important to emphasize that using the term 'the West' reflects Russia's anti-Western imaginaries and discourse, especially the construction of anti-Westernism in Neo-Eurasianism, and does not imply that the author understands 'the West' as a uniform or monolithic bloc or entity. In sum, this article aims to develop a better understanding of what is at stake in, and what are the inner logics and functions of, the current discursive clashes between Russia and the West. Under the surface of conflict constellations in Ukraine, these clashes have led to the formation of a different understanding of the universal, regional, and transnational meanings of sovereignty, territorial integrity, civilization, space, and Russia's exercise of political and executive authority and force beyond its territorial borders.

In developing conceptual approaches to understanding current processes of contesting territories, boundaries, citizenship, and sovereignties in the post-Soviet space, this article will proceed as follows. The next section will address the role of the foreign policy concepts of the Near Abroad and the *Russkii Mir* in Russia's discourses and its involvement in (frozen) conflict constellations in the post-Soviet space. The third section will identify links between these concepts and Russia's fragile stability as a post-Soviet authoritarian regime. The article will then present Neo-Eurasianism and the Fourth Political Theory as resonating variations of radical theoretical and ideological foundations for political practices of contesting sovereignty in post-Soviet (conflict) settings and blurring the lines between the domestic and international sphere. After

9 See, for instance, UN Security Council protocols: S/PV.7124, 1 March 2014; S/PV.7125, 3 March 2014; S/PV.7134, 13 March 2014; S/PV.7138, 15 March 2014; S/PV.7144, 19 March 2014; S/PV.7154, 13 April 2014; S/PV.7157, 16 April 2014; S/PV.7165, 29 April 2014; S/PV.7167, 2 May 2014.

outlining the many international and domestic dimensions of contested sovereignties in the post-Soviet space, the discussion will turn to the usage and attached meanings of the vocabulary of international law and politics that have materialized in the current discursive struggles between Russia and the West. The final section will conclude with a summary and an outlook. In sum, the goal of this article is not to argue in the framework of binary distinctions of right or wrong, legal or illegal, violation or justification, legitimate or illegitimate; rather, by taking the perspectives outlined above, it aims to develop conceptual approaches to further investigation and better understanding of the complex dimensions of the clashes between Russian and Western counter-narratives and discourses about the meanings and functions of basic principles of international law and politics as powerful societal regulative imaginaries.

2 **The Near Abroad and the *Russkii Mir*: Russia's Foreign Policy Agenda, (Frozen) Conflicts, and Contested Sovereignties in the Post-Soviet Space**

The collapse of the Soviet Union raised the question of how the post-Soviet geopolitical space would be reshaped and reinterpreted and who would do this.¹⁰ A core question was and continues to be: What are Russia's present and future roles in these processes?¹¹ Since the beginning of the 1990s, Russia has defined the independent post-Soviet states as its Near Abroad. The concept of the Near Abroad is related to the idea of a *Russkii Mir*.¹² Together, the *Russkii Mir* and Near Abroad function as key concepts in Russia's foreign policy that are closely connected to Russia's contentious engagements in Georgia and Ukraine.¹³ Moreover, the foreign policy concepts of the Near Abroad and the *Russkii Mir* are thought to resonate with certain ideas of Neo-Eurasianism, a form of historicized, traditionalist, civilizational, theoretical, and ideological framework that brings anti-modernism and anti-Westernism together under its umbrella. This especially reflects a clear antagonism toward what is considered

10 See also Vladimer Papava, "The Eurasianism of Russian Anti-Westernism and the Concept of 'Central Caucaso-Asia'", 51(6) *Russian Politics and Law* (2013), 45–86, at 45.

11 See also *ibid.*, 47.

12 The term '*mir*' means "community", "world", and "peace". Despite its common translation as Russian World, the author will continue using the transliteration *Russkii Mir* throughout the article.

13 Susanne Spahn, "Cleverer Schachzug. Völkerrecht Russland und das Prinzip der 'Schutzverantwortung'", 33–34(65) *Das Parlament* (10 August 2015), at 6.

the unipolar, hegemonic position of the United States in international law and politics, alongside a partly positive image of Europe as part of Eurasia with Russia as the ‘Heartland’ of a Eurasian zone. In short, Neo-Eurasianism is revitalizing historicized self-images of Russia and its enemies, while also conjuring up new enemies (see discussions below in Section 4).¹⁴

The relevance of an analytical focus on the concepts of the Near Abroad and the *Russkii Mir* is evident in the examples of post-Soviet de facto regimes like Abkhazia, South Ossetia, and Transnistria that have built up quasi-state institutions based on quasi-constitutions. Internationalized negotiation mechanisms have been established to settle the disputed status of these territories. From an international perspective, all three (frozen) status conflicts are in legal and political limbo, yet their internal status seems increasingly legalized and stabilized. Russia plays a particular role in these and other post-Soviet (frozen) conflicts and de facto state entities. On the one hand, no solution of (frozen) status conflicts seems feasible without Russia’s involvement in the various multilateral negotiation and conflict settlement mechanisms. On the other hand, Russia often plays the role of a kin or parent state for the putative internal stabilization of the de facto state entities and the perpetuation of their external limbo.¹⁵ Moreover, after recognizing Abkhazia and South Ossetia as independent states in 2008, Russia officially signed an association and integration agreement with Abkhazia and South Ossetia in 2015.¹⁶ Meanwhile, the current crisis in Ukraine has implicitly and explicitly put the complexities of post-Soviet (frozen) conflict constellations on the international agenda again.

Taken together, the foregoing developments appear to be shaped by a specific regional foreign policy strategy on the part of the Russian state that uses

-
- 14 Dmitry Shlapentokh, “The Great Friendship: Geopolitical Fantasies About the Russia/Europe Alliance in the Early Putin Era (2000–2008)—The Case of Alexander Dugin”, 22(1) *Journal of Contemporary Central and Eastern Europe* (2014), 49–79, at 49; Ray Silvius, “The Russian State, Eurasianism, and Civilisations in the Contemporary Global Political Economy”, 2(1) *Journal of Global Faultlines* (2014), 44–69, at 48; Ashot Manutscharjan, “Der gepflegte Mythos”, 33–34(65) *Das Parlament* (10 August 2015), at 5.
 - 15 Cindy Daase, “Abchasien, Süd-Ossetien und Transnistrien—*de facto*-(Klein)-Staaten im postsowjetischen Raum”, in Sebastian Wolf (ed.), *State Size Matters, Politik und Recht im Kontext von Kleinstaatllichkeit und Monarchie* (Springer vs, Wiesbaden, 2016), 219–249; For a comprehensive analysis of causes of internal wars in post-Soviet states, see, e.g., Christoph Zürcher, *The Post-Soviet Wars: Rebellion, Ethnic Conflict, and Nationhood in the Caucasus* (NYU Press, New York, 2007).
 - 16 Spahn, *op.cit.* note 13, 6; press statement following talks with President of South Ossetia Leonid Tibilov (18 March 2015), available at: <<http://en.kremlin.ru/events/president/transcripts/47876>>.

international legal vocabulary to argue for its engagement and interventions in the post-Soviet space.¹⁷ The examples provided relate to two caesuras in Russian foreign policy: the Russo-Georgian War of 2008,¹⁸ and then the so-called Euromaidan protests in 2013–2014, which in Ukraine is usually referred to as the Revolution of Dignity (*Revoliutsiia hdnosti*), the starting point of a process that led to protracted conflict constellations with Ukraine's sovereignty and statehood at stake.¹⁹ In 2008, the so-called Medvedev Doctrines envisioned—seemingly in the geopolitical tradition—the possibility of using military force to protect 'Russians abroad' and defend the sovereignty of the Russian state against arbitrary involvement.²⁰ Later that year, in August, Russia fought a war with Georgia, pointing to its responsibility to protect 'Russians abroad', among other things.²¹ In fact, due to what is commonly referred to as 'passportization', numerous inhabitants of the de facto state entities of Abkhazia and South Ossetia have Russian citizenship.

In the case of the Ukraine Crisis, the constellation is different. It resonates in particular with the foreign policy concept of the *Russkii Mir*. According to the civilizational concept of the *Russkii Mir*, Russia considers Russians abroad to include not only citizens of Russia living abroad but also ethnic Russians and what are called Russian-speaking people, all of whom belong to the *Russkii Mir* of which Russia is the responsible guardian and 'Heartland'. Thus, the definitions of who is Russian and who is a Russian abroad go beyond modern forms

17 Vladislav Tolstykh, "Three Ideas of Self-Determination in International Law and the Reunification of Crimea with Russia", 75(1) *ZaöRV* (2015), 119–140.

18 See Independent International Fact-Finding Mission on the Conflict in Georgia Reports, Vol. i–iii, available at <https://web.archive.org/web/20091007030130/http://www.ceiig.ch/pdf/IIFMCG_Volume_I.pdf>, <http://web.archive.org/web/20110706223037/http://www.ceiig.ch/pdf/IIFMCG_Volume_II.pdf>, and <http://web.archive.org/web/20110814045152/http://www.ceiig.ch/pdf/IIFMCG_Volume_III.pdf>.

19 Mälksoo, *op.cit.* note 5, 180; Spahn, *op.cit.* note 13, 6; Silvius, *op.cit.* note 14, 46; for approaches to, and debates about, Russian foreign policy in the 1990s and early 2000s, and especially during Putin's first term as president, see, e.g., Allison, *op.cit.* note 6; Hopf, *op.cit.* note 6; Kuhrt, *op.cit.* note 6; Donaldson, *op.cit.* note 6; President of Russia, Speech and the Following Discussion at the Munich Conference on Security Policy (10 February 2007); President of Russia, The Foreign Policy Concept of the Russian Federation (12 July 2008), available at <<http://archive.mid.ru/bdomp/ns-osndoc.nsf/1e5f0de28fe77fdc32575d900298676/869c9d2b87ad8014c32575d9002b1c38!OpenDocument>>; Ministry of Foreign Affairs of the Russian Federation, Concept of the Foreign Policy of the Russian Federation, Approved by President of the Russian Federation v. Putin (12 February 2013).

20 President of Russia, Speech and the Following Discussion, *ibid.*

21 The Foreign Policy Concept of the Russian Federation, *op.cit.*, note 19; Silvius, *op.cit.* note 14, 45; Spahn, *op.cit.* note 13, 6.

of citizenship to stress a traditionalist, cultural, civilizational concept of who is Russian and who belongs to the *Russkii Mir*, directly translatable as ‘Russian world’ or ‘Russian community’. Accordingly, the *Russkii Mir* stretches beyond states’ borders, contesting states’ sovereignty and territorial integrity, to redefine citizenship in a folkish-traditional way, especially in the Near Abroad.²²

Finally, in annexing part of another state’s territory with the Crimean Peninsula, Russia referred, *inter alia*, to its responsibility to protect Russians abroad and their belonging to the heartland of Russia. Since the summer of 2014, Russia has furthermore exercised a much-discussed degree of political and military control over the separatist Luhansk People’s Republic and the Donetsk People’s Republic. During the Ukraine Crisis, the concept of the *Russkii Mir* has resonated with the idea of an inherent civilizational connection between Russians and Ukrainians as one people, belonging to one historic space, that goes back to Kievan Rus’. Consequently, Russia’s controversial role in what is now generally termed ‘hybrid warfare’ in Ukraine—that is, the use of irregular forms of involvement, control, and force—amounts to a type of conduct that has changed the prevailing analysis of Russian foreign policy in the Near Abroad.²³ However, it should also be emphasized that the turmoil in Ukraine is not just a two-sided interstate conflict between Russia and Ukraine. A multitude of actors driven by diverse interests have spawned these complex and multifaceted constellations of conflict.²⁴

22 Mälksoo, *op.cit.* note 5, 182; Papava, *op.cit.* note 10, 47–48.

23 Nikoly Mitrokhin, “Infiltration, Instruktion, Invasion. Russlands Krieg in der Ukraine”, 64(8) *Osteuropa* (2014), 3–16, at 3, 5; Korhonen, *op.cit.* note 5, 453; Elizabeth Dunn, Michael Bobick, “The Empire Strikes Back: War Without War and Occupation Without Occupation in the Russian Sphere of Influence”, 41(3) *American Ethnologist* (2014), 405–413.

24 These complex constellations may be both the reason for, and the outcome of, the hybrid war and ambiguous strategies that are currently keeping Eastern Ukraine in a fragile limbo of ‘not yet peace’ while the territorial integrity and sovereignty of Ukraine remain permanently challenged, Korhonen, *op.cit.* note 5, 464. A first set of open interviews with Ukrainian international lawyers, members of the Ukrainian Ministry for Foreign Affairs, and members of the Ukrainian parliament (*Rada*) show a common argument in Ukrainian international legal discourse with the following line of reasoning about the legal character of the hybrid war in Eastern Ukraine: the Ukraine Crisis is (1) an international conflict, and (2) all interview partners across different political camps have uniformly refused to even consider direct talks with actors/leaders of separatists from Eastern Ukraine without a Russian proxy; in effect, this would mean (3) recognizing a domestic dimension of the conflict and the relevance of the separatist claims. Interviews with the author; see also Ministry of Foreign Affairs of Ukraine, “On Violations of Ukraine’s Law in Force and of Ukrainian-Russian Agreements by Military Units of the Black Sea Fleet of the Russian Federation in the Territory of Ukraine” (3 March 2014); Oleksandr Merezhko, “Crimea’s Annexation by Russia—Contradictions of the New Russian

The complex conceptual challenges outlined above warrant the preliminary assumption that neither doctrinal international legal viewpoints nor purely neo-realist, geopolitical, or great-power international political perspectives on Russia's conduct and rhetorical usage of international law will further the understanding of the meanings and functions of underlying concepts and discourses that challenge the Russian and the Western usages of the vocabulary of international law and politics in spheres of common and clashing interests in the post-Soviet space.²⁵

Before further exploring the contested sovereignties, borders, territories, and citizenship in the post-Soviet space from a discursive international law and politics perspective, the current domestic regime in Russia needs to be addressed. For the purpose of unpacking contested sovereignties in the post-Soviet area, such a discussion should focus on academic debates that find themselves challenged to explain the resilience of authoritarian regimes' power and legitimacy and the interconnections between the international and domestic spheres.²⁶

3 Stability, Legitimacy, and Identity in Post-Soviet Authoritarian Regimes

Despite an initial period of optimism about democratic transformation in the newly independent states after the collapse of the Soviet Union, authoritarian regimes have remained resistant in most parts of the post-Soviet space.²⁷ Modernization and democratization approaches have not managed to fully capture the complexities of transformation processes or, in particular, to explain the rise, stability, and relative legitimacy of post-Soviet authoritarian regimes. Consequently, current debates in the literature are increasingly seeking distance from the primarily referential nature of the Western model of modernization

Doctrine of International Law", 75(1) *ZaöRV* (2015), 167–194; Oleksandr Zadorozhnii, Porushennia Agresivnoiu Viinoiu Rosiis'koi Federatsiji Proty Ukrainy Osnovikh Printsypiv (Biblioteka kafedry mizhnarodnoho prava, Kyiv, 2015).

Korhonen, *op.cit.* note 5, 460.

25 Samantha Besson, "Sovereignty", *MPEPIL*, online edition (2011), 95.

26 On authoritarian systems' resistance to democratization in the twenty-first century,

27 see Holger Albrecht and Rolf Frankenberger, "Autoritäre Systeme im 21. Jahrhundert", in Holger Albrecht and Rolf Frankenberger (eds.), *Autoritarismus Reloaded. Neue Ansätze und Erkenntnisse aus der Autokratieforschung* (Nomos, Baden-Baden, 2010), 11–17; Beichelt, *op.cit.* note 8.

and democratization as a yardstick by which to measure transformation processes (of post-Soviet states). The challenge is to search for new paradigms that explain hybrid and asymmetric power relations,²⁸ and that help in approaching questions like what makes the Russian regime legitimate.

Beichelt convincingly finds that:

In the post-Soviet space, normative standards of the liberal democracy theory are annulled through authoritarian practices and anti-emancipatory ideas without the majority of the populations being bothered by these developments. This does not imply, however, that observers, i.e. Western politicians, journalists, or scholars, have to give up their ideals of democracy. Yet, for understanding current developments in Eastern Europe, it seems essential to not a priori declare the empirical conditions and normative reasoning of recognition of rule and authority in the post-Soviet space as inappropriate.²⁹

The general assumption is that those in power will seek to secure some consent concerning the legitimacy of their power, at least from the most important actors and groups among their subordinates.³⁰ Disciplines differ in their approaches to the question of what is legitimate power.³¹ Generally, however, legitimacy can be understood as a multidimensional concept that differentiates legal, normative, and empirical aspects of accepted and unaccepted exercises of power. Following Beetham, power can be considered legitimate insofar as (1) it is exercised in line with established rules, (2) these rules can be justified by reference to beliefs shared by both dominants and subordinates, and (3) there is evidence of the subordinates' consent to the particular power relationship. What counts as consent is a culturally specific matter determined by the conventions of a given society,³² with the caveat that no society can be said to have complete uniformity of beliefs.³³ In the end, both legitimacy and/

28 Beichelt, *op.cit.* note 8, 60–61.

29 Ibid., 61 (translation by the author, original quote in German).

30 David Beetham, *The Legitimation of Power* (Palgrave, London, 1991), 3.

31 Ibid., 4 *et seq.*

32 Legal validity is insufficient to secure legitimacy, since the rules by which power is acquired and exercised stand in need of justification (rightful source of authority). This is the second level of legitimacy: power is legitimate to the extent that the rules of power can be justified in term of beliefs shared by both dominant and subordinate. See Beetham, *op.cit.* note 30, 16–17, 19.

33 Beichelt, *op.cit.* note 8, 52; Beetham is critical when it comes to Weber's definition of legitimacy as "belief in legitimacy" (*Legitimitätsglauben*). See Beetham, *op.cit.* note 30, 6 *et seq.*, 17.

or illegitimacy can materialize in each of the three dimensions—that is, each can be realized to a different degree in a given context—without necessarily affecting the evaluation of legitimacy in the others. In the end, Beetham finds that “the social scientist, in concluding that a given power relationship is legitimate, is making a *judgement*, not delivering a *report* about people’s belief in legitimacy”.³⁴

Power, meanwhile, is created through social interaction, highlighting the relevance of social psychology, that is, social and psychological processes of self-categorization and collective identification.³⁵ As a theoretical and analytical framework, social psychology is gaining attention in authoritarianism research concerned with the relationship between identity and power.³⁶ The formation of collective identity is not primarily rooted in the satisfaction of needs or interests, but in the responsive construction of meaning(s), namely the meaning of the self in the social context and the interaction between self- and collective identity.³⁷ The question, then, is who responds to and who interprets collective identity. In the case of the Russian regime, the general Western opinion assumes that acceptance of, or indifference to, the regime and its actions is strongly rooted in the mechanisms of state propaganda.³⁸ In contrast, Boris Dubin, former head of the Department of Socio-Political Research at the Levada Center, argues that Russian domestic and international politics could still be accepted in the absence of propaganda spread by state-controlled media, as propaganda itself is not the sole source of collective identity and consciousness, but rather an instrument to nourish, enhance, and steer collective identity and consciousness. Propaganda does this especially when it declares a permanent state of exception and emergency: political events are defined as emergent and exceptional in order to influence collective opinion by pointing to a common threat to the collective identity, as is currently done in Russia.³⁹ This common identity is supposed to break with the Western focus on the

34 Beetham, *op.cit.* note 30, 13.

35 Bernd Simon, “Identität und Macht. Wann und warum Repression akzeptiert wird”, 64 (8) *Osteuropa* (2014), 63–72, at 63 *et seq.*; means and sources of power at 64 *et seq.*

36 Beichelt, *op.cit.* note 8, 56.

37 Simon, *op.cit.* note 35, at 67, 71 *et seq.*

38 Beichelt, *op.cit.* note 8, 54; *Ibid.* (Simon), 67.

39 Boris Dubin, “Macht, Masse, Manipulation. Putins Rating und Russlands Gesellschaft”, 64(7) *Osteuropa* (2014), 3–11, at 9; concerning the responsiveness of authoritarian regimes, see Daniel Lambach and Christian Göbel, “Die Responsivität autoritärer Regime”, in Holger Albrecht and Rolf Frankenberger (eds.), *Autoritarismus Reloaded. Neue Ansätze und Erkenntnisse aus der Autokratieforschung* (Nomos, Baden-Baden, 2010), 79–91.

individual by stressing the importance of the community and postulating and promoting differences between Russian and Western identities.

The break with the West, conceptualized as an antagonist, is the key concept in the following section, which addresses how the foreign policy agenda and domestic functionality of post-authoritarian Russia, as the continuator of the Soviet Union, might compare with Neo-Eurasianism as a theoretical and ideological concept that seems to resonate with policy concepts that, like the Near Abroad and the *Russkii Mir*, shape domestic and international politics and the (transitional) contestation of sovereignty, territories, borders, and citizenship in the post-Soviet space. In this space, the inside and outside of domestic and international affairs have been left aside, and the view has shifted to what in effect are different conceptualizations of sovereignty: the strong sovereignty of the ‘Heartland’ versus the contested, conditional sovereignty of the Near Abroad.⁴⁰ This aspect leads back to one of this article’s initial questions: Russia may well instrumentalize and manipulate the vocabulary of geopolitics, international law, and politics, but what if these clashes are also rooted in different imaginaries of international law and politics? The next section aims to unravel the origins of the cleavages between Russia and the West, which are packed in—yet seem to go beyond—the language and instruments of geopolitics.

4 Exploring Post-Soviet Ideologies: Neo-Eurasianism and the Fourth Political Theory

With the collapse of the Soviet Union, the question of how to reshape and re-interpret the imagination of a post-Soviet geopolitical space came to the forefront.⁴¹ In this regard, Russia’s transformation since the 1990s has been shaped by a search for identity.⁴² During the Putin era, and indeed since the late 1990s, the Russian state has promoted common-sense thinking about global affairs by producing a relatively coherent set of concepts about the world order that were created to counter liberal internationalism.⁴³ The core issue remains the nature of Russia’s reimagining of its role in the post-Soviet space and the effect this has on the imaginations of sovereignties in the post-Soviet space.⁴⁴ As

40 Matthew Schmidt, “Is Putin Pursuing the Policy of Eurasianism?”, 13(1) *Demokratizatsiya* (2005), 87–99, at 88.

41 Papava, *op.cit.* note 10, 45.

42 Silvius, *op.cit.* note 14, 44.

43 *Ibid.*, 47 *et seq.*

44 Papava, *op.cit.* note 10, 47.

indicated above, the concepts of the Near Abroad and the *Russkii Mir* seem to resonate with Neo-Eurasianism in that they frame foreign policy goals while also supporting forms of authoritarian domestic rule. Hence, this section will address in particular how the Neo-Eurasianist movement contributes to the re-imagination and contestation of sovereignties, territories, borders, and citizenship in the post-Soviet space and Russia's role in it.

At the core of this section is the Neo-Eurasianism of Alexander Dugin, former professor of sociology at Moscow State University,⁴⁵ who is said to have or have had the ear of high-ranking members of both the Duma and the presidential administration in the Kremlin.⁴⁶ Neo-Eurasianism serves the purposes of critiquing perceived American hegemony, consolidating and defending Russia's political apparatus, and obtaining legitimacy for Russia's state conduct at the domestic and international levels. According to Neo-Eurasianist ideas, legitimacy and identity are no longer based on a common project of modernization (as in the Soviet Union), but on a radical perception of civilizational differences and traditions.⁴⁷ Responsiveness is generated through appeals to the *longue durée* of common traditionalist culture, civilizational ideas, and religious beliefs.⁴⁸

So does Neo-Eurasianism amount to a theoretical and ideological justification of contemporary Russian anti-Westernism?⁴⁹ Can Neo-Eurasianism be considered an expression of Russia's neo-imperial ambitions?⁵⁰ Neo-Eurasianism primarily reflects various post-Soviet attempts to elaborate Eurasianist ideas in a comprehensive philosophical or political doctrine.⁵¹ A brainchild of post-1917 revolutionary Russian émigrés, the original doctrine of Eurasianism differed from two other leading approaches to Russians' view of Russia's place in the world: Slavophilism and Westernism. Slavophiles believed Russia was part of a pan-Slavic world, whereas Westernizers assumed that Russia was part of the West, considered in a very broad sense. Eurasianists, however, proclaimed that Russia was neither part of the pan-Slavic world (to which it nevertheless refers) nor part of the West. Instead, Eurasia would

45 Dugin was dismissed from Moscow State University in summer 2014.

46 Jean-Marie Chauvier, "Die Wiederentdeckung Eurasiens. Putin erhebt eine alte Idee zur geopolitischen Doktrin", *Le Monde Diplomatique* (12 June 2014), available at <<http://www.monde-diplomatique.de/pm/2014/06/13.mondeText1.artikel,a0051.idx>>, 14.

47 On 'modernity' and 'mentality', see Lambach and Göbel, *op. cit.* note 39, 85.

48 *Ibid.*, 91.

49 Papava, *op. cit.* note 10, 45.

50 *Ibid.*, 49.

51 Silvius, *op. cit.* note 14, 50.

constitute a unique civilizational entity of its own, peopled by a blend of Orthodox Slavs and Muslims with Russia as its 'Heartland'.⁵²

Dugin's view from circa 2000 until 2008 was that Europe and Russia were not antithetical to each other but were instead related. Both Europe and Russia, according to Dugin, could well develop according to the same principles. Dugin strongly supported the idea of pan-European unity, even referring to the from a Neo-Eurasianist's perspective unpopular Gorbachev's idea of a 'Common European Home'.⁵³ Hence, debates over Neo-Eurasianism, civilizational differences, and geopolitical identity have proliferated since the 1990s and seem to have gained importance in contemporary Russia.⁵⁴ Neo-Eurasianist and broader civilizational concepts offer Russia an ideological framework for demonstrating that its foreign policy agenda and current conduct draw on a *longue durée* of "Russian tradition", and that Russia's "state-led Eurasian integration" initiatives rest upon a cultural legitimacy rooted in cultural and civilizational differences between Russia and the West, as well as in Russia's special historical and cultural role in the Eurasian space.⁵⁵ Neo-Eurasianism and Dugin's Fourth Political Theory revived geopolitics as a phenotype of an ideological, cultural, and civilizational framework, leading to the redefinition of the area and geographies of the post-Soviet space while also actively furthering the delegitimization of an antagonistic West.⁵⁶ Reference to common civilizational and cultural narratives enables the Russian state to challenge universalist (Western) approaches to state conduct and emphasize that liberal democracy constitutes a hegemonic geopolitical, geo-economic, and geo-cultural project emanating from the West in general and the United States in particular.⁵⁷

52 For Eurasianism's connections and distinctions to Pan-Slavism, see Schmidt, *op.cit.* note 40, at 93 *et seq.*; Shlapentokh, *op.cit.* note 14, at 51; Alexander Dugin, *Die Vierte Politische Theorie* (Arktos Media, Budapest, 2013); Alexander Dugin, *Last War of the World-Island: The Geopolitics of Contemporary Russia* (Arktos Media, Budapest, 2015); Alexander Dugin, *Eurasian Mission: An Introduction to Neo-Eurasianism* (Arktos Media, Budapest, 2014).

53 Shlapentokh, *ibid.*, at 58.

54 Silvius, *op.cit.* note 14, 49.

55 Papava, *op.cit.* note 10, 49.

56 There are five categories or dimensions of Eurasianism in contemporary Russian geopolitical thought: expansionism, civilizationism, stabilizationism, geoeconomism, and Westernism; Papava, *op.cit.* note 10, 62 *et seq.*; See also David Armitage, *Foundations of Modern International Thought* (Cambridge University Press, Cambridge, 2013), 32.

57 In short, liberalism and democratization are regarded as adversarial/hostile hegemonic ideologies of the West, particularly the United States. See Silvius, *op.cit.* note 14, at 45; Manutscharjan, *op.cit.* note 14, 5.

The ultimate purpose of this line of argumentation was to demonstrate that the reconstitution of a state-sanctioned Russian geopolitical identity was not occurring in a historical or ideological vacuum. The Near Abroad and the *Russkii Mir* resonate with historicized imperial and geographical definitions aimed, for instance, at creating a Eurasian Union—a shared continent state with a common economy, transport corridors, and representative bodies.⁵⁸ The Russian case of Neo-Eurasianist thinking demonstrates the renewed politicization and significance of historical and traditional collective imaginaries and subjectivities.⁵⁹

Furthermore, in his book *The Fourth Political Theory*, Dugin declares Fascism and Communism failed and dead. He also announces the end of the “End of History”, that is, the end of liberalism, the dominant concept after the end of the Cold War, as the “third theory”.⁶⁰ His Fourth Political Theory advocates for an active conservatism that is anti-rational and anti-democratic, in which elites and governance are legitimized through a form of “common spirituality”. Presenting the Fourth Political Theory as anti-modern, Dugin borrows from authors ranging from Samuel Huntington to Carl Schmitt to advocate a strong state, a Russian ‘Heartland’, and the creation of a geopolitical civilizational space under Russian leadership.⁶¹ Dugin refers to, among other things, Haushofer’s biologicistic concept of *Lebensraum* and Schmitt’s idea of *Nomos*, the general form of organization of the objective and subjective factors of a given territory, as well as the theory of *Großraum*.⁶² In short, Dugin’s Neo-Eurasianism and the Fourth Political Theory make numerous eclectic references to Western theories and thinking, either to argue against them or to support promoted concepts and terms.

58 Papava, *op.cit.* note 10, 58.

59 Silvius, *op.cit.* note 14, 46.

60 See Francis Fukuyama, “The End of History?”, *The National Interest* n.d. (1989); Dugin, *Die Vierte Politische Theorie*, *op.cit.* note 52.

61 Chauvier, *op.cit.* note 46; Marlène Laruelle, “Aleksandr Dugin: A Russian Version of the European Radical Right?”, *Kennan Institute Occasional Papers, Occasional Paper No. 294*, 8; Dugin, *Die Vierte Politische Theorie*, *op.cit.* note 52.

62 Laruelle, *op.cit.* note 61, 7–8; Alexander Weinlein, “Moskau will mehr vom Meer”, 33–34 (65) *Das Parlament* (10 August 2015), at 5; Dugin, *op.cit.* note 52; Carl Schmitt, *Der Nomos der Erde* (Duncker & Humblot, Berlin, 1997); Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Duncker & Humblot, Berlin, 1990), on Definition der Souveränität (Definition of Sovereignty), 11–22, esp. Souveränität und Ausnahmezustand (Sovereignty and State of Exception), 11–12; Carl Schmitt, *Völkerrechtliche Großraumordnung* (Deutscher Rechtsverlag, Berlin-Wien, 1939), see esp. 69–70 concerning the definition of *Großraum/Reich*.

Neo-Eurasianism criticizes the idea of universal values as a clearly Western project. In their stead, it creates civilizational and cultural zones or spaces: an American zone, an Afro-European zone, an Asian-Pacific zone, a Eurasian zone. Therewith, it not only nourishes forms of cultural relativism in (international) law and politics, but also creates breaking points and cleavages between Russia and its conceptualized antagonistic West.⁶³ It perceives Russia as a constitutive nation of the Eurasian zone with imperial tendencies. For example, “No nationality should be recognized territorially, because ‘Russians exist as the only national community within a supra-national imperial complex’.”⁶⁴ This quote expresses an ethno-differentialism that promotes the idea of Russian distinctiveness and sees the Eurasian space as a sphere in which non-Russian peoples may enjoy certain degrees of autonomy but not full sovereignty.⁶⁵ In effect, Neo-Eurasianism and the Fourth Political Theory stand for a neo-traditional, anti-Western, transnational understanding of international norms, relations, regional and world order, and re-imaginings of sovereignty, territory, and citizenship in the post-Soviet space.⁶⁶

In sum, the Russian state both produces and assimilates concepts and ideas corresponding to its real or desired place within such an order.⁶⁷ Legal and political concepts relating to space, sovereignty, territorial borders, and citizenship are core themes. This perspective underlines the need to take semi-otic and extra-semiotic factors into consideration when examining the ways in which Russia—meaning Russian officials as well as actors like international lawyers—employs ideas from Russian foreign policy, Neo-Eurasianism, culture, and history as a means of interpreting and expressing the parameters of the contemporary legal and political world order and Russia’s place in it as a counter-concept to the West.

5 The Many Meanings of the Vocabulary of International Law: Approaching Clashing International Law Discourses between Russia and the West

The Russian government’s currently postulated official positions in international law and politics are perceived as challenges to and for the alleged

63 Marlène Laruelle, *Russian Eurasianism: an ideology of empire* (Woodrow Wilson Center Press, Washington dc, 2008), 120–124.

64 Laruelle, *op.cit.* note 61, 19.

65 Laruelle, *op.cit.* note 61, 19 *et seq.*

66 Armitage, *op.cit.* note 56, 6–7.

67 Silvius, *op.cit.* note 14, 45–46.

universal European and Western approaches to sovereignty, territorial integrity, non-intervention, and self-determination.⁶⁸ Russia maintains a hyper-formalist, positivist approach to international law when pointing to the alleged hypocrisy of the West's violation of the sovereignty and territorial integrity of Serbia, Iraq, or Libya.⁶⁹ However, the arguments raised by Russia are seen as a form of international legal rhetoric that Russia (ab)uses to justify its ambition to further consolidate its dominant (hegemonic) position in its post-Soviet Near Abroad.⁷⁰ Nevertheless, as Oklopcic points out:

Unlike another geo-political crisis of our time—the attempts of ISIS to redraw the map in the Middle East—the situation in Ukraine is not a conflict over the existence of international legal order, but rather one of the meaning of its foundational building blocks: The internal and external self-determination of peoples, territorial integrity, and the sovereign equality of independent states.⁷¹

Thus, what is at risk is not the existence but the coherence and stability of international law and politics, in particular the usage of the international legal vocabulary of dispute settlement and international law's function of offering institutions for the resolution of disputes.

The intensity and complexity of the current constellations of conflicts between Russia and the West, especially regarding Ukraine, threaten the regional and global political and legal order. Some even speak of an emerging Cold War II.⁷² The relevant discussions are additionally torn between two vectors: the established usage of the language of international law and international law as a language of (hybrid) warfare and lawfare.⁷³ Hybrid warfare in the post-Soviet space, the contestation of borders, and the meanings of sovereignty pose a challenge not only for doctrinal international lawyers but also for international lawyers whose ambitions go beyond doctrinal debates when addressing the conflict constellations that Ukraine currently faces.⁷⁴ For the latter contingent of international lawyers, it is the relevance of law for the conflicts in Ukraine that is at stake, and they find themselves confronted with detached debates

68 Mälksoo, *op.cit.* note 5, 153 *et seq.*

69 Mamlyuk, *op.cit.*, note 5, 491; Tolstykh, *op.cit.* note 17; Mälksoo, *ibid.*, 182, 192.

70 Mälksoo, *ibid.*, 153 *et seq.*

71 Oklopcic, *op.cit.* note 5.

72 Mamlyuk, *op.cit.*, note 5, 479.

73 *Ibid.*, 505.

74 Oklopcic, *op.cit.* note 5, 353–354.

in different countries, addressing, for instance, the factual hierarchies among sovereign states.⁷⁵ Thus, they also aim to explore how international lawyers should respond to the challenges posed by the blurring of the meanings of fundamental legal categories in the course of the Ukraine Crisis.⁷⁶ Fully acknowledging the importance of this approach, this article now turns its focus to the different usage of the vocabulary of international law and the creation of clashing international legal (hegemonic) discourses by Russia and the West. This perspective will presumably enable deeper insight into the different understandings of the language(s) of international law.

What does hegemony mean? Here, it does not mean mere dominance of one country over other countries; nor is it used as a euphemism for imperialism. The term hegemony, in the present context, is rather used to describe a sought-after dominance or claim of universality regarding the meanings and interpretations of the vocabulary of international law.⁷⁷ At the same time, this perspective follows the assumption outlined above: rather than doctrinal exegesis, international legal analysis should approach Russia's role in the conflict constellations in Ukraine through the lens of situational critique as a form of comparative legal studies that emphasizes the embeddedness, situatedness, and interrelatedness of the objects and subjects concerned.⁷⁸ This perspective stresses the need to delve into the situational conditions of the parties to a (frozen) conflict, between whom a clash of discourses is evolving around the usage and meanings of international legal and political vocabulary. The language of international law and the usage of the vocabulary of international law can be also regarded as expressions of identity.⁷⁹

75 Marxsen, Peters, and Hartwig, *op.cit.* note 6; Oklopcic, *ibid.*, 353–354.

76 These authors stress that the conflict constellation is not aggravated by “bad men” but rather by the bad fit of conceptual tools, which in the given situation makes law seem irrelevant. See Korhonen, *op.cit.* note 5, 452, 456 *et seq.*

77 “[T]o become hegemonic, a state would have to found and protect a world order which was universal in conception, i.e. not an order in which a state directly exploits others but an order which most other states (or at least those within the reach of the hegemony) could find compatible with their interests. I would most likely give prominence to opportunities for the forces of civil society to operate on the world scale (on the scale of the sphere within which hegemony prevails). Hegemony at the international level is thus not merely an order amongst states.” See Rober Cox, *Approaches to World Order* (Cambridge University Press, Cambridge, 1996), 135 *et seq.*

78 Korhonen, *op.cit.* note 5, 453; see also Oklopcic, *op.cit.* note 5.

79 Anna Dolidze, “The Non-Native Speakers of International Law: The Case of Russia”, 1 (15) *Baltic Yearbook of International Law* (2015), 77–103; Korhonen, *ibid.*, 454; Oklopcic, *ibid.*

Another clear challenge is that the public and private information spheres have become battlefields for the international legal and political clashes between Russia and the West. This constellation raises questions about the reliability of sources—that is, whether there is any objectivity in them, or any that can be gained through them.⁸⁰ ‘Reliability’ and ‘objectivity’, however, acquire different meanings from the perspective of the usage of the vocabulary of international law as a politics with assumed clashes of narrative and (hegemonic) discourses.⁸¹ How can the term ‘hegemony’ be applied to processes of making claims using the vocabulary of international law?⁸² Koskenniemi uses a hegemonic perspective as a descriptive technique whereby something particular—an interest or preference—is presented as something universal or dominant, such as a certain understanding of international law and its principles.⁸³ According to Koskenniemi, international law is a process of articulating political preferences into legal claims, which cannot be detached from political contestation or from the conditions under which they were made. Instead of being understood as universal, ingrained with objectivity, and opposed to hegemony, international law is seen as a hegemonic technique in which different approaches to, and contestations of, international legal discourses are seen as hegemonic discourses.⁸⁴ Thus, ‘hegemonic contestations’, according to Koskenniemi, are processes in which international actors routinely challenge each other by invoking legal rules and principles onto which they project meanings that support their own preferences and counteract those of their opponents.⁸⁵ Unlike Koskenniemi, this article does not assume that there are clear discursive preferences and outcome objectives.⁸⁶ The end goal of this article is not to make a neo-realist argument or provide a neo-realist analysis, but rather to seek the roots of, and reasons for, patterns of neo-realism in the concepts and discourses discussed above, namely the Near Abroad and the *Russkii Mir*, as well as sovereignty, territory, and citizenship.⁸⁷

What is at stake, when taking this perspective on the Near Abroad and the *Russkii Mir*, is, *inter alia*, the alleged coherence of international law. On their international (legal) front lines, Russia and the West argue for their respective

80 See also Mamlyuk, *op.cit.* note 5, 497–498.

81 Martti Koskenniemi, “International law and hegemony: a reconfiguration”, 17(2) *Cambridge Review of International Affairs* (2004), 197–218, at 219.

82 *Ibid.*, 219.

83 *Ibid.*

84 *Ibid.*, 221.

85 *Ibid.*, 222.

86 *Ibid.*

87 Contrary to Mamlyuk, *op.cit.* note 5, 508 *et seq.*

understandings of international law in order to legitimize their courses of action. In sum, seen from a discursive theoretical perspective based on the conceptualizations of Laclau and Mouffe, and on Glasze's suggestions concerning their lexicometric and narrative, interpretative operationalization, international legal disputes between Russia and the West cannot (only) be understood as exchanges of positivistic legal arguments and evaluations but must also be regarded as opposing, seemingly clashing hegemonic discourses about the meanings and functions of international law as a powerful societal regulative ideal.⁸⁸

Moreover, Russia's official argumentation regarding territorial conflicts in Ukraine is a good example of how Russia, though hardly neglecting sovereignty as a foundational concept of international order (politics and law), nonetheless challenges the legal and political meanings of the concept of sovereignty in its Near Abroad by establishing spatial and trans-boundary differences and hierarchies of sovereignty.⁸⁹ Sovereignty, which has never gone uncontested, is a constant presence in political and legal debate and language but becomes changeable, for instance through radical traditional ideas like Neo-Eurasianism.⁹⁰ The legal and political dimensions of the concept of sovereignty in the post-Soviet space can be contextualized in the foreign policy concepts of the Near Abroad, the *Russkii Mir*, and the theoretical and ideological framework of Neo-Eurasianism and the Fourth Political Theory. Interestingly enough, Russia's argumentation concerning its own domestic and international sovereignty and conditional sovereignty in its Near Abroad is not synchronic but is tied to civilization and ideas of the 'Heartland' and *Großraum*.⁹¹ This asynchronism and differentiation also affects Russian discourses on the territoriality of political rule and the use of force.⁹² Thus, the current clash between Russian and Western legal discourse has led to changing spatial understandings of sovereignty rather than neglect (of the relevance) of sovereignty. These findings also underscore that there "hardly ever was a genuine and deep-going agreement between Moscow and the West regarding the underlying values

88 Georg Glasze, "Vorschläge zur Operationalisierung der Diskurstheorie von Laclau und Mouffe in einer Triangulation von lexikometrischen und interpretativen Methoden", 33(1) *Historical Social Research* (2008), 185–223; Judith Renner, "'Versöhnung' als leerer Signifikant im Kontext politischer Transitionen: eine diskurstheoretische Konzeptualisierung", 86(1/2) *Die Friedens-Warte* (2011), 245–270.

89 Mälksoo, *op.cit.* note 5, 189 *et seq.*

90 Dieter Grimm, *Souveränität. Herkunft und Zukunft eines Schlüsselbegriffs* (Berlin University Press, Berlin, 2009), 117.

91 *Ibid.*, 100–101.

92 *Ibid.*, 104.

and principles of the post-World War II international legal order”.⁹³ This conflictual constellation does not imply that the term ‘sovereignty’ has lost its connection to contemporary ideas of political rule and authority in the post-Soviet space or that the content of sovereignty would not matter. However, it is likely to lead to permanent contestation of any universal understanding of state-centered sovereignty during efforts to address post-Soviet (frozen) conflicts and Russia’s role in them.⁹⁴

6 Summary and Outlook

Since 2014, Ukraine, usually on the periphery of mainstream attention,⁹⁵ has been the actual and metaphorical ‘hybrid’ battleground, in terms of international law and politics, between Russia and its conceptual antagonist, the West. Hybrid warfare and lawfare in international law and politics has put Ukraine’s sovereignty at stake, with broader implications for the long-term configuration of diverging understandings and clashing discourses about the transcontinental meanings of territorial integrity, borders, citizenship, and sovereignties in the post-Soviet space, and for Russia’s geopolitical and legal role in it.⁹⁶ These findings call for continuous interdisciplinary conversations.⁹⁷ Such conversations, however, face an obstacle: a deficit of area knowledge and expertise born of a certain neglect of legal and political area studies, especially East European studies, in the course of the past 25 years.⁹⁸

93 Mälksoo, *op.cit.* note 5, 177; concerning sovereignty, see *ibid.*, 100.

94 *Ibid.*, 115–116.

95 Ute Schaeffer, *Ukraine. Reportagen aus einem Land im Aufbruch* (Verlag Klaus Wagenbach, Bonn, 2015), 7, 9, 102 et seq.; Andreas Kappeler, *Geschichte der Ukraine* (C.H. Beck, Bonn, 2015), 334–382.

96 Oklopcic, *op.cit.* note 5, 363; Schaeffer, *ibid.*, 128.

97 Oklopcic, *ibid.*

98 Illustrative of this point is the fact that the most heated and prominent public academic debates on the topic in Germany have been held between two historians: Karl Schlögel and Jörg Barberowski. See Adam Soboczynski and Elisabeth von Thadden, “Wer versteht den Schurken?”, interview with Karl Schlögel and Jörg Barberowski, *Die Zeit* (16 July 2015); see also Karl Schlögel, *Entscheidung in Kiew. Ukrainische Lektionen* (Hanser Verlag, München, 2015), 9–17 (on historians and interpreting current conflicts and events); Manfred Sapper, “Chancen zum Neuanfang”, 33–34 *Das Parlament* (10 August 2015), at 15.